

The CURE

Contract User's Resource for Excellence

The "CURE" is a quarterly newsletter of the State Controller's Office

Volume 3, Issue 4

October 1, 1997

News From The SCO

A State Controller's Office Update

by John Ivy

The State Controller's Office (SCO) has assumed the responsibility for editing and publishing the CURE. If you have any information that you would like to see published in the CURE, or would like to be added to the mailing list for the CURE, please send it to the attention of John Ivy at the SCO, 1525 Sherman Street, Suite 250, Denver, CO 80203. John can also be reached by telephone at (303) 866-3765 or by E-mail at john.ivy@state.co.us.

The SCO has received 500 copies of the *Contract Procedures and Management Manual*. A copy will be sent to each state agency and institution along with a new document developed by the SCO, the *Contract Processing Guide*. The *Contract Processing Guide* was specifically designed to assist agencies in processing their state contracts. A copy of the *Contract Processing Guide* will be distributed to each CCIT member attending the October 15 meeting.

General Support Services has developed a course, *State Contracts 101*, that is based on the Contract Management Guide (Chapter 10 of the *Manual*). This course has already been given to over 200 state employees and based on the comments received from the course evaluations, is a huge success. Please refer to the flyer included with this issue of the CURE for a description of the course and information on how to enroll.

Just a Note

With the elimination of all the "red-tape" and all of the improvements made in processing state contracts by the CATF, CCIT, and CMTF, the CURE has been renamed. Please note that "CURE" now stands for :

Contract Users' Resource for Excellence

What do you think of the new name?

SBREP's Role When an Agency Vacates State Owned Space

by Jeff Brauer

As a matter of practical reality, any agency presently occupying state-owned office space can, and does, from time to time, request and obtain funds from the General Assembly to lease and pay for a new office space location in a privately owned building. This is often accomplished prior to any significant consideration by either the agency or the legislature of the following concerns regarding any agency's vacation of its State owned space:

1. Assuming the now vacant space is just one portion of an entire State owned building, what consideration has been given to identifying an agency to re-occupy the vacant space?
2. What are the costs of reconfiguring and refinishing the space to meet the needs of the new occupant and from what funds will these costs be paid?
3. How long will the space be vacant between occupants? During that time period, who will be responsible for the vacant space maintenance costs that the occupying agency typically pays to GSS?
4. What should occur to a completely empty building, assuming that the agency's vacating of its existing space results in a vacant building? Should it be re-occupied, sold, renovated or demolished? Where will the funds come from to pay for any of these options?
5. Once a building is vacant, who is responsible for routine maintenance, risk management and security costs and from what source will these costs be funded?
6. Should a building be demolished, what use will be made of the then vacant land site?

(Concluded on Page 4)

From the State Purchasing Division

by Loraine Burger

1. Delegation of vendor selection authority from DoP is NOT the same thing as having contract signature authority. BEFORE you sign a contract you must make sure YOUR AGENCY has given YOU authority to sign that contract. This latter issue is one of authority to issue the commitment documentation for a vendor selection. These are separate issues.

2. Some vendors (such as office supply vendors) are eager to have state agencies open a 'corporate account'. Frequently this requires that a state employee sign a vendor contract. There may be several problems with this:

A. Vendor selection problem. If you sign a contract with one vendor without going through a competitive selection process, other similar vendors may insist that you sign contracts with them. To refuse to sign a contract may be challenged as showing favoritism.

B. The contract may contain legal obligations to which state employees are prohibited from agreeing. If so, the person signing has made a *personal* obligation to the vendor.

3. All Group I agencies are required to send to the Division of Purchasing copies of purchase orders they process, with the exception of solicitations they put on the BIDS system or those issued from state price agreements. Monthly or quarterly submission is acceptable.

4. When an agency conducts a competitive process when it is not legally required to do so, that solicitation should be placed on the BIDS system.

5. Watch out that you do not unknowingly engage in *auction* practices. Auctioning occurs when any vendor's bid or other element of discussion or negotiation is conveyed to another potential or actual bidder. State employees are prohibited from auctioning.

6. Keep in mind that every state agency and institution may set limits *more restrictive* than those set by law. For example, while the Fiscal Rules allow procurements up to \$3000 without a requisition and PO, an agency may require its employees to prepare RQs and POs above \$1000.

7. All agencies and institutions are encouraged to establish

standard minimum format and content requirements for solicitation documents, such as language on insurance requirements, vendor response format, tie bid break process, and how award will be made. Setting such a standard minimum format and content will ensure that solicitations contain minimum legal requirements and consistency from bid to bid.

8. When conducting a sole source procurement within your agency's discretionary dollar amount, especially when it's at the top of your discretionary spending limit, consider preparing a sole source justification (even though not required) in case your agency subsequently needs to make an additional procurement from this vendor which puts it over your discretionary limit.

9. When an agency procures a sole source within (that is, below) its discretionary spending limit, the agency need not prepare a sole source form. Since selection of the vendor is discretionary, no justification is needed.

10. When an agency obtains a product for testing purposes, if the product exceeds \$25.00 in value, the agency should issue a commitment document (such as a purchase order) to cover the transaction. This commitment document can be *no cost* or *minimum cost*, such as \$.01. Providing this document to the vendor protects both the State and the vendor (*and the employee involved in the transaction*). Failure to provide this document to the vendor before receipt of the product opens the employee to personal liability for the cost of the product, if it is damaged or stolen, etc.

Effective November 1, 1997

Yvonne Anderson who is responsible for reviewing both state contracts and purchase orders for the State Personnel Director will be transferring from the executive director's office to the state controller's office on November 1, 1997.

This move is designed to provide better customer service for those state contracts and purchase orders that involve procuring personal services. This is yet another example of General support Services responding to the needs of their customers by providing "one-stop shopping" for all state contracts.

Yvonne's telephone number will remain the same. Her new fax number will be (303)866-4233, and her new mailing address will be the same as the State Controller's Office: 1525 Sherman Street, Suite 250, Denver, CO 80203.

Contract Management and the “Independent Contractor” Clause

By Richard Pennington

There has been some confusion about agency responsibilities under the independent contractor clause in personal services contracts. As you recall, the clause is prescribed by the Personnel Rules and records the parties’ agreement that the relationship is an “independent contractor” relationship. The clause says:

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

(Clause A16, Appendix A, Chapter 6, of the *Colorado Contract Procedures and Management Manual*). The basic purpose of this clause is to clearly record the parties’ intent that the contractual relationship is not one of “employer” and “employee.”

This clause does not require a contractor to obtain workers’ compensation insurance where otherwise not required by law. Agency personnel should not advise contractors, though, concerning the requirements of the statutes with respect to unemployment taxes and workers’ compensation insurance. This article is intended to provide guidance on when contracting personnel should require proof of insurance. In general, the State’s independent contractor clause requires the contractor to provide proof of workers’ compensation insurance.

The statutes governing unemployment compensation taxes and workers’ compensation discuss statutory compliance in terms of “employer” and “employee” relationships. Generally, an individual operating as a sole proprietor, and not using other employees during the course of contract performance, would not be required by law to pay either unemployment taxes or obtain workers’ compensation. The same rule applies to performance

of services by the named partners of a general partnership that has no other employees. Consequently, in cases where the contractor is exempt from the requirements, there is no need to insist on receipt of any forms or certifications. In any other case, normally the entity will have to show evidence that it has workers’ compensation coverage. There is one exception for corporate officers or members of limited liability companies (LLCs) who are also owners of the business, (Section 8-41-202, CRS). They may voluntarily elect to reject workers’ compensation coverage. The election must be made by filling out a form WC 43 (“Rejection of Coverage by Corporate Officers or Members of a Limited Liability Company”) or substantially equivalent form (Rule IIID1, Election to Reject Coverage, pp. 3.01-3.04, 7 CCR 1101-3), and providing the form to the insurance carrier (if any) or to the employer compliance unit of the Division of Workers’ Compensation.

Thus, you must focus on who is actually doing the work on your contract. A sole proprietor with no employees is not required to file any form or maintain any workers’ compensation insurance on himself or herself. Similarly, if the employees in any business are covered and you get evidence of such coverage, you need not be concerned whether the owners have elected to not cover themselves. But where you are dealing with a small business of two or more people and they tell you the individuals working on your contract are exempt as owners, corporate officers, LLC members or anything of that nature, you should ask for a copy of their election form WC 43.

Page 6-26 of the *Colorado Contract Procedures and Management Manual* says otherwise:

If a contractor claims to be exempt from workers’ compensation laws, a Colorado Compensation Insurance Authority (CCIA) form entitled “Independent Contractor Notification Form,” that includes certifications that the contractor meets the criteria for exemption, must be submitted. If the contractor does not furnish this form, contact your assigned assistant Attorney General.

The form referred to in the *Manual* was designed by CCIA for use by its policy holders in order to satisfy statutory provisions governing “statutory employers.” So long as the required independent contractor provision is used in State contracts, however, agencies need not require submission of the CCIA form or its equivalent. We suggest that you delete the first paragraph at page 6-26 of the *Colorado Contract Procedures and Management Manual* and refer to this CURE in the margin. The State Controller’s Office will announce in the future how this and other revised pages to the *Manual* will be distributed.

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SBREP’S Role *(from page 1)*

Past experience would suggest that these six points usually receive only cursory, if any at all, consideration prior to the time an agency moves out of a State owned building. In planning such a move, all emphasis tends to center around the agency’s success in obtaining the legislative appropriation to pay the rent at the new proposed location. Having done so, GSS may be left with vacant space and/or an entire vacant building with insufficient funds, notice, time to plan, and to budget, for such a situation.

The entire move, and its consequences, could be handled far more expeditiously if at least preliminary answers were obtained to the above listed concerns before an agency vacates space in a State owned building. Moreover, if the move is going to result in an entirely vacant building, the legislature must be given an opportunity to consider the costs associated with: refinishing, rehabilitating and/or demolishing the vacant structure or of selling it “AS IS” . In addition, it must also consider the interim costs of routine maintenance, risk management and security until completion are accomplished.

CCIT Meeting		
Wednesday October 15		
State Services B-70 1525 Sherman St.		
Agenda		
9:00-9:15	Manual and Training	John Ivy
9:15-9:30	Phase II Waivers	Gary Newell
9:30-10:15	Procurement Issues	Loraine Burger
10:15-10:35	Contract Modifications	Richard Pennington
10:35-10:50	CLIN Reports	Phil Holtmann
10:50-11:10	CCIT Work Groups	John Ivy
11:10-11:30	Other Topics	CCIT Members